



PROFESSIONAL SERVICES AGREEMENT

(version 9-29-2021)

This AGREEMENT (“Agreement”) is entered by and between **RPS Group** (the “Professional”), located at **575 N. Dairy Ashford Suite 700, Houston, TX 77079** and the **City of League City** (“City”), a home-rule municipality, located at 300 W. Walker St., League City, Texas 77573 on the date set forth below.

Terms:

1. **Scope of Services:** Professional will perform the services as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **Jarbo Bayou Watershed Drainage Study**. Services related to design, bid, or construction of a public work shall conform to the requirements set forth in **Exhibit B**, if applicable. If there is a conflict between the terms of this Agreement and Exhibits A (or B, if applicable), the terms of this Agreement will prevail.
2. **Term and Termination:** This Agreement shall commence on **May 29, 2023** and shall expire on **August 28, 2023** City reserves the right to terminate this Agreement for convenience upon seven (7) days written notice to Professional. Upon such termination, City shall pay Professional, at the rate set out in **Exhibit A**, for services satisfactorily performed up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, City will not be required to pay or reimburse Professional for any services performed or for expenses incurred by Professional after the date of the termination notice that could have been avoided or mitigated by Professional.
3. **Compensation:** Professional shall be paid for the services as set forth in **Exhibit A**. In no event shall the total compensation exceed **\$126,890.00** during the term of this Agreement. City shall tender payment (including progress/partial payments) for services only after such services are completed and are deemed to be acceptable under this Agreement, in the sole reasonable discretion of City. Professional must submit to City invoices for all services provided, which invoices must include details and dates of service. Payment by City shall be made within thirty (30) days of receipt of an invoice, except for any portion of the invoiced amount that City disapproves as not compliant under this Agreement, in the sole reasonable discretion of City. If City disapproves any amount submitted for payment by Professional, City shall give Professional specific reasons for disapproval in writing.
4. **Insurance:** Professional **is not** required during the Contract Term to maintain insurance as set forth below:
 - (a) Comprehensive General Commercial Liability insurance covering bodily injury and property damage, with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate;
 - (b) Professional Liability (errors and omissions/malpractice) insurance with minimum coverage limits—exclusive of defense costs—of \$2,000,000 per occurrence; and
 - (c) If at any point during the Contract Term it is foreseeable that Professional will enter upon City premises:
 - (i) Worker’s Compensation coverage with statutory limits for the State of Texas, and
 - (ii) Commercial Automobile Liability coverage with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate.All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Professional shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City.

Professional shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Liquidated Damages:** Professional acknowledges that time is of the essence in performing this Agreement. City and Professional (collectively, the “Parties”) agree that if Professional is late in performing any service designated as Time Critical on the Scope of Services attached to this Agreement, City will suffer loss, damages, or other harm from Professional’s delay. The Parties agree that the amount of loss, damages, or harm likely to be incurred as a result of Professional’s delay is incapable or difficult to precisely estimate, and therefore the Parties desire to stipulate the amount of such loss, damages, or harm. Accordingly, Professional shall have deducted from any amounts owed under this Agreement liquidated damages equal to the number of calendar days of the delay(s) times the daily rate, which rate shall be one-tenth of one percent (0.1%) times the compensation shown in the Scope of Services for such Time Critical service. The Parties further agree that: (i) the liquidated damages specified herein are not a penalty but rather bear a reasonable relationship to, and is not plainly or grossly disproportionate to, the probable loss likely to be incurred by City as a result of Professional’s delay; (ii) one of the reasons for City and Professional to agree to such amounts is the uncertainty and cost of litigation regarding the question of actual damages; and (iii) City and Professional are sophisticated business parties and negotiated this Agreement at arm’s length.
6. **Independent Professional:** Professional is an independent Professional and is not an employee, partner, joint venture, or agent of City. Professional understands and agrees that he/she will not be entitled to any benefits generally available to City employees. Professional shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by City for such expenses except as otherwise provided in this Agreement.
7. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work (the “Work”) for hire under federal copyright law. Ownership of the Work shall belong to and remain the exclusive property of City. The Work may be edited at any time within City’s discretion. If the Work would not be considered a work-for-hire under applicable law, Professional hereby assigns, transfers, and conveys any and all rights, title and interest to City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the Work, City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within City’s discretion. Professional shall not sell, disclose or obtain any other compensation for the services provided herein or the Work. If the Work is one to which the provisions of 17 U.S.C. § 106A apply, Professional hereby waives and appoints City to assert on Professional's behalf Professional's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for City’s purposes.
8. **Confidentiality:** During the course of the services to be provided under this Agreement, Professional may become privy to confidential information of City. Professional agrees to treat as confidential the information or knowledge that becomes known to Professional during performance of this Agreement and to not use, copy, or disclose such information to any third party unless authorized in writing by City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Professional shall promptly notify City of any misuse or unauthorized disclosure of City’s confidential information and upon expiration of this Agreement shall return to City all confidential information in Professional’s possession or control. Professional shall further comply with all information security policies of City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Professional without the prior written approval of City.

9. **Warranties and Representations:** Professional warrants and agrees that Professional shall perform its services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any service performed on premises owned or controlled by City, Professional warrants and agrees that Professional will perform said services in compliance with all City rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
10. **Licenses/Certifications:** Professional represents and warrants that it will obtain and maintain in effect, and pay the cost of, all licenses, permits or certifications that may be necessary for Professional's performance of this Agreement. If Professional is a business entity, Professional warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Professional.
11. **Performance/Qualifications:** Professional agrees and represents that Professional has the personnel, experience, and knowledge necessary to qualify Professional for the particular duties to be performed under this Agreement. Professional warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.
12. **Conflict of Interest:** Professional warrants, represents, and agrees that Professional presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Professional's performance of the services hereunder. Professional further warrants and affirms that no relationship or affiliation exists between Professional and City that could be construed as a conflict of interest with regard to this Agreement.
13. **INDEMNIFICATION: PROFESSIONAL SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY , AND EACH OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF PROFESSIONAL OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROFESSIONAL IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT OR VIOLATION OF LAW.**
14. **Force Majeure:** Neither party shall be liable to the other for (i) any delay in performance; (ii) any other breach; (iii) any loss or damage; or (iv) any contribution to or aggravation of any of the foregoing; arising solely from uncontrollable forces such as fire, theft, storm, war, or any other cause that could not have been reasonably avoided by the party's exercise of due diligence.
15. **Notices:** Any notice given under this Agreement by either party to the other may be affected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the Parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notices shall be deemed communicated three (3) days after mailing.

16. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006 of the Texas Family Code, Professional certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
17. **State Auditor:** Professional understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, the "Auditor"), to conduct an audit or investigation in connection with those funds. Professional agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Professional will include this provision in all contracts with permitted subprofessionals.
18. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
19. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by City and Professional to attempt to resolve any claim for breach of contract made by Professional that cannot be resolved in the ordinary course of business. The Director of Finance of City shall examine Professional's claim and any counterclaim and negotiate with Professional in an effort to resolve such claims. This provision shall not be construed as a waiver by City of its right to seek redress in the courts.
20. **Entire Agreement:** This Agreement contains the entire understanding between the Parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the Parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the Parties executed subsequent to this Agreement.
21. **Eligibility to Receive Payment:** Professional certifies that, as a matter of state law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.
22. **Payment of Debt/Delinquency to State:** Professional certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Professional agrees that any payments owing to Professional under the Agreement may be applied directly toward any debt or delinquency that Professional owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
23. **Products and Materials Produced in Texas:** If Professional will provide services under the Agreement, Professional covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
24. **Risk of Loss:** All work performed by Professional pursuant to the Agreement will be at Professional's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work, or the need to redo or revise the work for any reason except to accommodate a City request to materially alter the work, prior to City's acceptance, bearing the costs of such loss or damage to or such redo or revision of the work will be Professional's responsibility.
25. **Publicity:** Professional shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
26. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity,

illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this Agreement are declared to be severable. The Parties may mutually agree to renegotiate the Agreement to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.

27. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Any terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.
28. **Sovereign Immunity:** The Parties agree that neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement constitutes a waiver of sovereign immunity by City.
29. **Authority:** Professional warrants and represents that Professional has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of City represents that he/she has authority to sign this Agreement on behalf of City.
30. **Non-Waiver:** The Parties specifically agree that neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Professional. No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
31. **Prohibitions Pursuant to Texas Government Code:** By executing this Agreement Professional verifies that Profession (1) does not boycott Israel and will not during the term of this Agreement per Section 2274.002; (2) is not engaged in business with Iran, Sudan, or any company on the list referenced in Section 2252.152; (3) does not boycott energy companies and will not during the term of this Agreement per 2274.002; and (4) does not have a practice, policy, guidance, or directive of this Agreement against a firearm entity or firearm trade association and will not during the term of this Agreement per 2274.002.

(signature block on next page)

Executed on _____ . *(date to be filled in by City Secretary)*

RPS GROUP - “Professional”



Mike McClung, PE, CFM, ENV SP, Director Water Business Unit

CITY OF LEAGUE CITY – “City”

John Baumgartner, City Manager

Attest:

Diana Stapp, City Secretary

Approved as to Form:

Office of the City Attorney

Exhibit A

Scope of Services/Description of Products/Payment Schedule
(6 pages, including this page)

See attached Project Proposal from RPS Group

May 15, 2023

Ms. Sonia I. Phillips, PE, CFM, PMP
Floodplain Administrator/Drainage Engineer
Engineering Department
City of League City
500 W Walker St.
League City, Texas 77573

Re: Proposal for Professional Engineering Services for the Jarbo Bayou Watershed Drainage Study

Dear Ms. Phillips:

RPS appreciates the opportunity to provide the City of League City (Client) with this proposal for professional services for the above-referenced project. Jarbo Bayou is a tributary of Clear Creek and generally flows north-northeast to FM 2094, then west-northwest through Clear Lake Shores to Clear Lake. Our watershed study area consists of the boundary of Jarbo Bayou to the north, Lawrence Road to the east, Woodcock Street to the south, and Columbia Memorial Parkway to the west as shown in the attached Exhibit. The study area is primarily urban with mixed land use of residential and commercial developments. About half of the study area is located within the 100-yr and 500-yr FEMA floodplain.

The watershed drainage study will identify areas of concern and provide recommendations to improve drainage within the study area. RPS will develop an existing hydraulic model of the area utilizing existing models, limited topographic survey, LiDAR and as-built plans provided by the City. We will also prepare an opinion of probable construction cost (OPCC) of the recommended improvements for the City's use in upcoming budget discussions.

SCOPE OF BASIC PROFESSIONAL ENGINEERING SERVICES

RPS is prepared to provide professional engineering services to complete the necessary work described above. The scope of services for various aspects of the project is outlined below.

Basic Services

Task 1 – Project Management and Coordination

- A. Project Management - RPS will supervise and coordinate various items of work including scheduling resources, assign tasks, develop schedules and deadlines, monitor costs, and prepare progress reports.
- B. Coordination
 - i. Attend a kick-off meeting with the City to review the approved scope of work along with the goals of the project to ensure its success.
 - ii. General coordination with the City's project manager to provide updates as required.
 - iii. Meet up to 3 times with the Client (online, in office, or at the study site) to discuss project status and obtain input on the draft submittal.
 - iv. Provide monthly status reports summarizing progress to date.

Task 2 – Data Collection

- A. Identify existing data sources and resources currently held by the City and make arrangements to obtain this information. Review as-builts already provided by the City.
- B. Coordinate with TxDOT for any available drainage data and future projects along FM 518.
- C. Review adjacent projects, current and future, to identify any impact to or from subject project. Identify any requirements stemming from this relationship if it exists.
- D. Obtain and review drainage channel study completed by others.
- E. Download and review terrain information including topographic survey and LiDAR.
- F. Collect available information regarding critical facilities, known drainage problems, and repetitive and similar losses.
- G. Conduct one field visit to verify existing drainage infrastructure within study area and identify areas for more detailed topographic information.
- H. Identify major outfalls to Jarbo Bayou and League City Parkway.
- I. Identify any gaps in this data and make arrangements to supplement through other sources.

Task 3 – Topographic Survey

- A. RPS will contract with a subconsultant to provide topographic information for the following:
 - Culvert location, size, and flow line elevations.
 - Spot check ditch flow lines.
 - Bridge geometry and flow lines, if needed.
 - Critical utilities that may be in conflict with future infrastructure.
 - Spot check roadway centerline information.
 - Ditch cross-sections.

During the data collection task, RPS will determine and specify topographic survey needs for key drainage infrastructure. We will set aside a budget of \$20,000 for the topographic survey level of effort to aid in the modeling effort. This phase will be billed as Time & Materials.

Task 4 – Modeling and Analysis

- A. RPS will evaluate existing models to help determine causes of existing flooding from Jarbo Bayou.
- B. RPS will create a rain-on-mesh (ROM) 2D model utilizing ATLAS 14 rainfall data at the 10-yr, 25-yr, 50-yr, 100-yr frequencies.
- C. Create maps and exhibits showing the areas of flooding based on existing conditions.
- D. Assess and calculate drainage capacity of existing facilities in the study area and develop a Level of Service (LOS) they provide.
- E. Identify and prioritize areas most in need of improvement as shown in the model and determine the problem based on size, grade, or condition of existing drainage infrastructure.

Task 5 – Drainage Report

- A. RPS will prepare a draft of the Jarbo Bayou Watershed Drainage Report that will include the following:
 - Summary of existing conditions
 - Model methodology
 - Identified problem areas including flooding, nuisance ponding, and undersized infrastructure.
 - Recommended drainage improvements and results prioritization
 - Preliminary opinion of probable construction cost (OPCC) for the recommended drainage improvements.
- B. RPS will meet with the City to review draft comments of the drainage report.
- C. RPS will address the City's comments and submit a final signed and sealed drainage report.

Ms. Sonia I. Phillips, PE, CFM, PMP
May 15, 2023

FEES

The fees for each phase of the project are outlined below and will be billed on a Lump Sum Basis unless shown otherwise:

BASIC SERVICES

<u>Task</u>	<u>Fee Basis</u>	<u>Fee Amount</u>
Task 1 – Project Management & Coordination	Lump Sum	\$ 21,660.00
Task 2 – Data Collection	Lump Sum	\$ 23,860.00
Task 3 – Topographic Survey	Time & Materials	\$ 20,000.00
Task 4 – Modeling and Analysis	Lump Sum	\$ 33,260.00
Task 5 – Drainage Report	Lump Sum	<u>\$ 27,110.00</u>
Reimbursable Expenses	Time & Materials	\$ 1,000.00
	Grand Total	\$ 126,890.00

This proposal is based on the following assumptions:

- RPS will prepare the draft and final report electronically. Hard copies can be submitted if requested.
- Detailed design plans for the proposed improvements are not included in this scope of work.

We anticipate submitting the draft drainage report within three months of notice to proceed. The final report will be submitted no later than two weeks after all comments have been received from the City.

We appreciate the opportunity to submit this proposal to you and look forward to working with you on this important project. If you have any questions or need additional information, please do not hesitate to contact me at your convenience.

Sincerely,

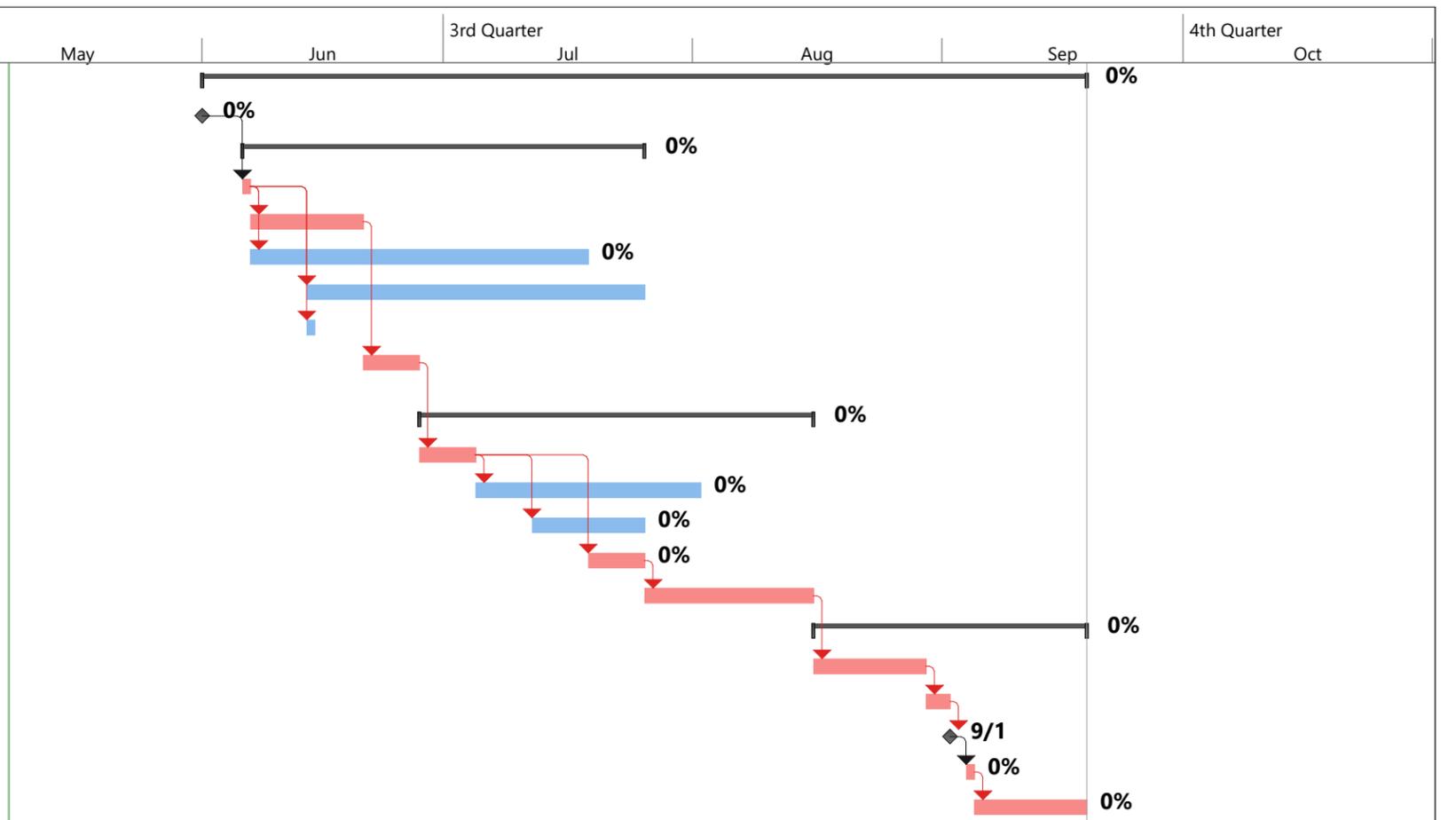


Mike McClung, PE, CFM, ENV SP
Director, Water Business Unit

MM:ng

Attachments

ID	Task Name	Duration	Start	Finish	Predecessors	May	Jun	3rd Quarter Jul	Aug	Sep	4th Quarter Oct
1	Jarbo Bayou Drainage Study	78 days	Thu 6/1/23	Mon 9/18/23							
2	Project Authorization	0 days	Thu 6/1/23	Thu 6/1/23							
3	Data Collection	36 days	Tue 6/6/23	Tue 7/25/23							
4	Kick-off meeting	1 day	Tue 6/6/23	Tue 6/6/23	2FS+3 days						
5	Collect and Review data	10 days	Wed 6/7/23	Tue 6/20/23	4						
6	Coordinate with TxDOT	30 days	Wed 6/7/23	Tue 7/18/23	4						
7	Initial Survey	30 days	Wed 6/14/23	Tue 7/25/23	4FS+5 days						
8	Conduct field visit	1 day	Wed 6/14/23	Wed 6/14/23	4FS+5 days						
9	Identify and gaps and collect data to supplement	5 days	Wed 6/21/23	Tue 6/27/23	5						
10	Modeling and Analysis	35 days	Wed 6/28/23	Tue 8/15/23							
11	Evaluate Existing Models	5 days	Wed 6/28/23	Tue 7/4/23	9						
12	Create ROM 2D	20 days	Wed 7/5/23	Tue 8/1/23	11						
13	Create maps & exhibits	10 days	Wed 7/12/23	Tue 7/25/23	11FS+5 days						
14	Assess capacities	5 days	Wed 7/19/23	Tue 7/25/23	11FS+10 days						
15	Identify & prioritize improvements	15 days	Wed 7/26/23	Tue 8/15/23	14						
16	Drainage Report	24 days	Wed 8/16/23	Mon 9/18/23							
17	Prepare Report	10 days	Wed 8/16/23	Tue 8/29/23	15						
18	Internal QAQC	3 days	Wed 8/30/23	Fri 9/1/23	17						
19	Submit to City for Draft review	0 days	Fri 9/1/23	Fri 9/1/23	18						
20	Meet with City to review comments	1 day	Mon 9/4/23	Mon 9/4/23	19						
21	Address comments and submit final report	10 days	Tue 9/5/23	Mon 9/18/23	20						

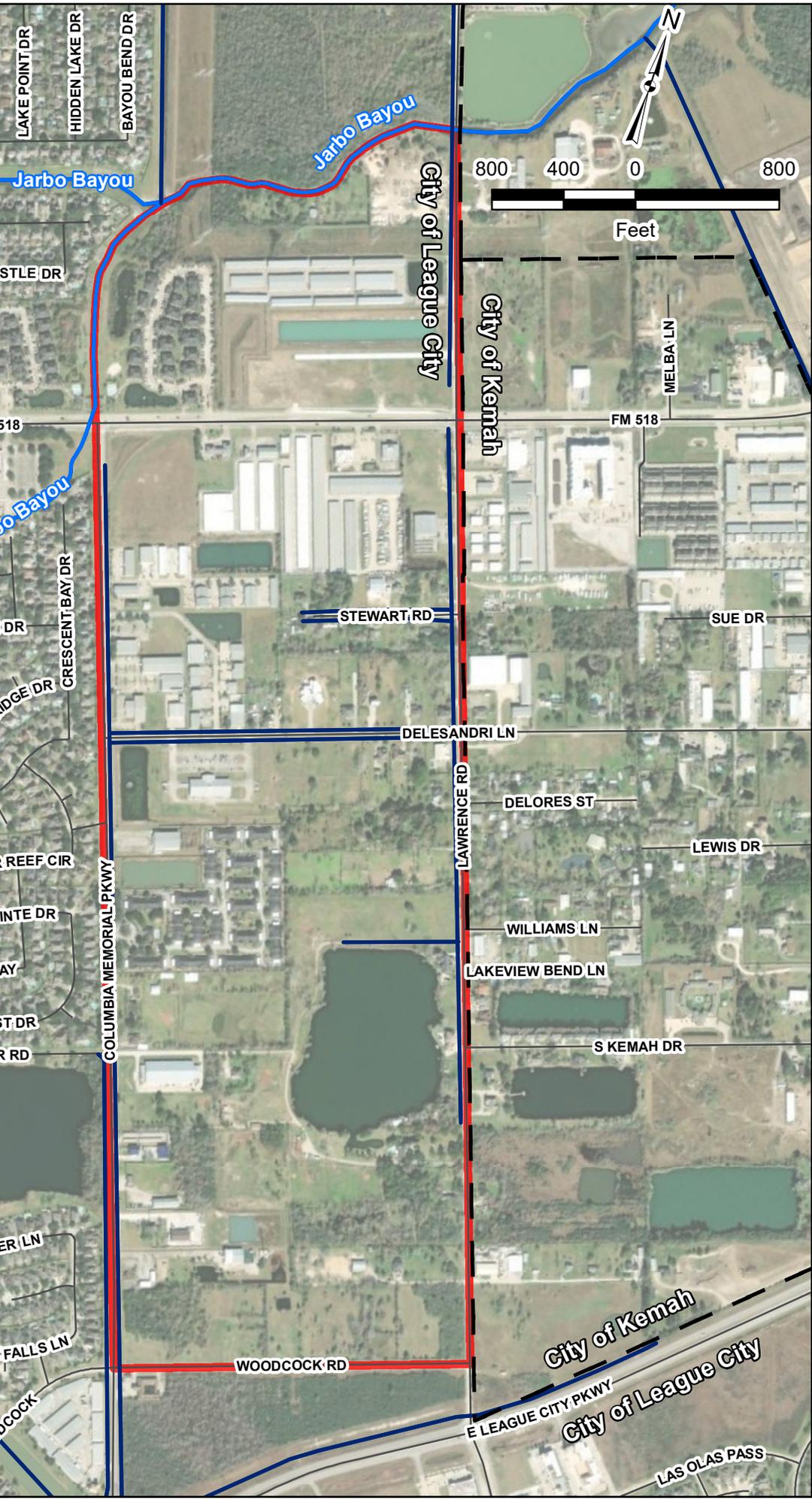


Jarbo Bayou Watershed
Drainage Study Schedule
Date: Mon 5/8/23
Working Days

Task		Inactive Task		Manual Summary Rollup		External Milestone		Manual Progress	
Split		Inactive Milestone		Manual Summary		Deadline			
Milestone		Inactive Summary		Start-only		Critical			
Summary		Manual Task		Finish-only		Critical Split			
Project Summary		Duration-only		External Tasks		Progress			

Legend

-  City Boundary
-  Drainage Study Limits
-  Drainage System
-  Streets





League City
TEXAS



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T +1 281 589 7257 E usinfr@rpsgroup.com

**Jarbo Bayou Watershed
Drainage Study**

City of League City, Texas

TETRA TECH NO.: 000000	EXHIBIT
SCALE: 1" = 800'	1
DATE: MAY 2023	

Exhibit B

Not Applicable - Page Intentionally Left Blank